

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

_____)	
In the matter of:)	File No. PAN-NE-07-4002
)	FMF No. 39545
New Ventures Associates LLC)	
Crow Lane Landfill)	NOTICE OF INTENT TO ASSESS
Newburyport, Massachusetts)	A CIVIL ADMINISTRATIVE PENALTY
_____)	April 12, 2007

I. THE PARTIES

1. The Massachusetts Department of Environment Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7. With a principal office located at One Winter Street in Boston, Massachusetts, and a Regional Office located at 205B Lowell Street, Wilmington, Massachusetts, 01887.
2. New Ventures Associates LLC (the "Respondent") is a Delaware corporation with a business address at 95-87 Boston Street, Everett, Massachusetts, 02149. The Respondent is the current owner and operator of the Crow Lane Landfill (the "Facility") located on Crow Lane, Newburyport, Massachusetts.

II. STATEMENT OF FACTS AND LAW

3. The Department's authority to issue this Notice of Intent to Assess a Civil Administrative Penalty ("Notice") is conferred by M.G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00 *et seq.*, and by: M.G.L. c. 111, §§ 150A and 150A1/2, and the regulations promulgated thereunder at 310 CMR 19.000 and 310 CMR 16.00.
4. On February 27, 2003, the Department and the Respondent entered into an Administrative Consent Order, ACO-NE-01-4001 (the "ACOP") for the closure and capping of the Facility. Paragraph 21 of ACO required, in part, that the Respondent shall perform the actions required by the ACO in accordance with M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 19.000, the MassDEP's July 6, 2001 *Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites*, MassDEP's May 1997, *Landfill Technical Guidance Manual*, and all other applicable federal, state and local laws, regulations and approvals.
5. On October 20, 2006, the Suffolk Superior Court entered a preliminary injunction in *Commonwealth v. New Ventures Associates, LLC*, Civil Action No. 06-0790 C. This preliminary injunction required the Respondent to take certain actions at the Facility related

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to, *inter alia*, the control of landfill gas emissions and the final capping and closure of the landfill. The preliminary injunction was amended by order of the Court on November 1, 2006 and February 22, 2007.

6. As a result of discussions concerning the Respondent's compliance with the preliminary injunction and other issues not covered by the preliminary injunction related to, *inter alia*, wind blown litter, MassDEP, by email correspondence on January 3, 2007, provided the Respondent with a list of actions, attached hereto as Exhibit 1, that must be performed at the Facility to control odors and excessive blowing litter and to minimize the infiltration of water in areas where active filling was occurring. These required actions included the placement of daily cover consisting of one or more of the following: tarps, six (6) inches of soil, or a spray on coating approved by the Department.
7. The following facts have led the Department to issue this Notice:
 - A. On March 23, 26, 28 and 30, and April 2, 5, 9, and 11, 2007, representatives of MassDEP inspected the Facility and observed excessive wind blown litter which was blowing or had blown onto abutting properties and adjoining areas of Crow Lane. The litter consisted principally of shredded plastic that is present in the Construction and Demolition Fines and Residuals (C & D Material) used as grading and shaping material at the Facility. MassDEP representatives observed the litter being blown from areas of the landfill where C& D Material is exposed, including inactive areas that were not covered by tarps, as required by the preliminary injunction including, without limitation, the south slope of the landfill at Crow Lane and active working areas of the landfill including, without limitation, at the top of the haul road and during the dumping and placement of the C & D Material from trucks.
 - B. On March 28, 2007, Mr. John A. Carrigan, the Solid Waste Section Chief for MassDEP's Northeast Regional Office, informed Mr. Michael Quatromoni of SITEC Environmental, Inc. (SITEC), the Respondent's consultant and the Engineer of Record for the closure of the Facility, by email that MassDEP representatives had observed excessive litter at the Facility which had blown from the Facility onto abutting properties and Crow Lane. Mr. Carrigan informed Mr. Quatromoni that he must address this problem in his inspection of the Facility scheduled for March 30, 2007.
 - C. On April 4, 2007, MassDEP received an email from Mr. John Morris, the Director of the City of Newburyport Health Department stating that Mr. Morris and Mr. David Madden, who monitors activities at the Facility pursuant to the City of Newburyport's Noisome Trade Site Assignment for the Facility, observed excessive litter blowing from the Facility onto abutting properties and Crow Lane.
 - D. The Respondent is in noncompliance with M.G.L. c. 111, §§ 150A and 150A1/2, and 310 CMR 19.000 because the Respondent has failed: (i) to conduct its operations in a manner

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that minimizes blowing litter; (ii) to implement adequate measures to prevent the scattering of solid waste (litter) from beyond the work area; (iii) and to maintain the cleanliness of the Facility and surrounding areas impacted by blowing litter as required by 310 CMR 19.130(17).

E. 310 CMR 19.130(17) reads:

310 CMR 19.130(17) –Litter Control

- (a) Landfill operations shall be conducted so as to minimize blowing litter.
- (b) The operator shall incorporate litter fencing, natural barriers or other devices to prevent the scattering of solid waste beyond the working area.
- (c) The operator shall maintain the general cleanliness of the facility and surrounding areas impacted by blown litter from the facility or the access roads.

8. The instances of noncompliance described in Paragraph 7 above were willful and not the result of error, as set forth in 310 CMR 5.14.

III. DISPOSITION

9. For the reasons stated above, the Department assesses the Respondent a civil administrative penalty in the amount of Fourteen Thousand Eight Hundred Dollars (\$14,800.00) as follows:

- A. \$6,900.00 for failing to conduct landfill operations so as to minimize blowing litter, in violation of 310 CMR 19.130(17)(a); and
- B. \$6,900.00 for failing to incorporate litter fencing, natural barriers or other devices to prevent the scattering of solid waste beyond the working area, in violation of 310 CMR 19.130(17)(b); and
- C. \$1,000.00 for failing to maintain the general cleanliness of the facility and surrounding areas impacted by blown litter from the facility or access roads, in violation of 310 CMR 19.130(17)(c).

10. As required by M.G.L. c. 21A, § 16 and 310 CMR 5.25, the Department considered the following factors in determining the amount of penalty.

- A. Actual and potential impact on public health, safety, and welfare, and the environment.
- B. Actual and potential damages suffered, and actual or potential costs incurred, by the Commonwealth, or by any other person.
- C. Whether the Respondent took steps to prevent the failure(s) to comply.

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- D. Whether the Respondent took steps to promptly come into compliance after the occurrence of the failure to comply.
 - E. Whether the Respondent took steps to remedy and mitigate whatever harm might have been done as a result of the failure(s) to comply.
 - F. Whether the Respondent, has previously failed to comply with any regulation, order, license or approval issued or adopted by the Department, or any law that the Department has the authority or responsibility to enforce.
 - G. Making compliance less costly than the failure to comply that would be penalized.
 - H. Deterring future noncompliance by both the Respondent and by others.
 - I. The Respondent's financial condition.
 - J. The public interest.
11. Questions regarding the contents of this Notice of Intent to Assess a Civil Administrative Penalty should be directed to Mr. John A. Carrigan, Massachusetts Department of Environmental Protection, Northeast Regional Office, 205B Lowell Street, Wilmington, Massachusetts 01887, (978) 694-3299.
12. The Respondent is hereby notified that:
- A. It has a right to an adjudicatory hearing on this civil administrative penalty assessment.
 - B. Effective twenty-one (21) days after the date of issuance of this Notice, the Respondent shall be deemed to have waived its right to an adjudicatory hearing on this civil administrative penalty, assessment unless, within said twenty-one (21) days, the Respondent files with the Department (i.e., the Department receives) a written statement that:
 - (1) does either or both of the following, and does so subject to and in compliance, with the applicable provisions of the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.00:
 - a. denies what is set forth in Section II above;
 - b. asserts that the money amount of the civil administrative penalty, as set forth in paragraph nine (9) above, is excessive.
 - (2) clearly and concisely states every point of fact and law the Respondent intends to raise in the adjudicatory hearing.
 - (3) said request for administrative hearing must include a copy of the document being appealed and must be addressed and mailed to:

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Docket Clerk
Commonwealth of Massachusetts
Department of Environmental Protection
Office of Administrative Appeals
One Winter Street, Boston, MA 02108

- (4) Said request for administrative hearing must also be accompanied by a valid check made payable to the Commonwealth of Massachusetts in the amount of \$100.00 for the required filing fee. The filing fee must be mailed to:

Commonwealth of Massachusetts
Massachusetts Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211-4062

The filing fee is not required if the appellant is a city, town, county, or district of the Commonwealth of Massachusetts or a municipal housing authority. Failure to pay the filing fee as required is grounds for denial of the request for hearing.

Waiver of filing fee: Upon a showing of undue financial hardship, the Department may waive the adjudicatory hearing filing fee. A person who believes that payment of the \$100.00 filing fee would be an undue financial hardship must file, together with the request for adjudicatory hearing as provided above, an affidavit setting forth the facts the appellant believes constitute the undue financial hardship.

13. If the Respondent waives its right to an adjudicatory hearing then it must pay the full amount of the civil administrative penalty no later than twenty-one (21) days after the date of issuance of this Notice. Payment must be made by certified check, cashiers check or money order. Payable to the Commonwealth of Massachusetts. No other form of payment shall be accepted. The Respondent shall clearly print the following on the face of its payment:

- A. the name "New Ventures Associates, LLC", and
- B. the file number appearing on page 1 of this notice (PAN-NE-07-4002),
- C. the Respondent's Federal Employer Identification Number, and shall mail it to the following address:

Commonwealth of Massachusetts
Department of Environmental Protection

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Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982.

14. If the Respondent waives its right to an adjudicatory hearing, and if it does not pay the full amount of the civil administrative penalty within twenty-one (21) days after the date of issuance of this Notice, then it shall be liable to the Commonwealth for up to three times the amount of the penalty, together with costs, plus interest from the time the penalty became final, and attorneys' fees, including all costs and attorneys' incurred directly in the collection of the penalty.
15. If the noncompliance described in Section II continues or is repeated after the date of issuance of this Notice, additional civil administrative penalties may be assessed for every day of such noncompliance from now on. Such additional civil administrative may be assessed in the course of the 'adjudicatory hearing on this assessment of a civil administrative penalty, without issuance of any other penalty assessment notice to the Respondent. If the Respondent waives its right to an adjudicatory hearing on this assessment of a civil administrative penalty, such additional civil administrative penalties may be assessed in as many additional penalty assessment notices as necessary.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

This final document copy is being provided to you electronically by the
Massachusetts Department of Environmental Protection.
A signed copy of this document
is on file at the DEP office listed on the letterhead.

By: RJC
Richard J. Chalpin, Regional Director
Metropolitan Boston/Northeast Regional Office
295B Lowell Street
Wilmington, MA 01887

Date: April 12, 2007

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EXHIBIT 1

January 3, 2007

Email Correspondence

This is an electronic facsimile of a document on file with the Massachusetts Department of Environmental Protection.

From: Carrigan, John (DEP)

Sent: Wednesday, January 03, 2007 9:10 PM

To: Richard A. Nylen Jr. (rnylen@ldnllp.com)

Cc: Matt Ireland; WThibeault; Crowlandlandfill@verizon.net; OBrien, Heidi (DEP); Dingle, Mike (DEP); Chalpin, Richard (DEP)

Subject: Actions Items - Order and Noncompliance with Paragraph 1(h) Pre-treatment System

Importance: High

Attachments: NV_PlaceMatPhaseIA07_01_03.doc

Chip:

The attached document summarizes the activities that New Ventures must perform to resume the placement of C&D Material at the site. Please note that the document also includes in Section D three additional compliance issues that New Ventures must address. The attached document has also been modified to reflect that, as discussed below, the pre-treatment system is not operating in accordance with the performance standard of Appendix A Section D. New Ventures must immediately take all steps necessary to comply with the provisions of Paragraph 1(h) of the Order.

MassDEP's contractor, Shaw Environmental, is routinely collecting drager tubes samples of the H₂S concentrations at the inlet, the mid-point (between the treatment vessels), and outlet (inlet to the flare) of the pre-treatment system. On Tuesday January 2, 2006 are contractor measured the following concentrations of H₂S at these points at approximately 5 PM; the concentrations measured by New Ventures yesterday evening are also included. Sandy McMurtry provided me with the New Ventures data at my request this evening (attached email).

	<u>MassDEP/Shaw</u>	<u>New Ventures (ppm)</u>					<u>[flow rate of</u>
	<u>approximately 241 cfm]</u>						
	1/2/06 approx. 5 PM	1/2/06 5 PM	9 PM	1/3/06 1 AM	5 AM	5 PM	
System Inlet:	24,000 ppm	20,000	19,000	20,000	20,000	18,000	
System Mid-point:	10,000 ppm	NS	NS	NS	NS	NS	
Outlet (inlet to flare):	4,000 ppm	3,200	3,000	3,200	2,800	3,000	

Appendix A Section D. 2. provides that "The pre-treatment system shall be considered to be in compliance with the performance criteria of D.1.c. and D.1.d. above provided that the H₂S concentration of the landfill gas into the flare [Outlet (inlet to flare) in the above table] does not exceed the minimum destruction efficiency of 95% reduction of H₂S or the 1.01 lbs/hr H₂S criteria for any two hours during a twenty-four hour period. In determining compliance with these requirements, any single sample shall be considered to be represent 1 hour, unless a minimum of 4 samples are collected over an hourly period and averaged on a time weighted-basis."

Based on the samples of the inlet and outlet pre-treatment samples collected by MassDEP's contractor and New Ventures since approximately 5 PM yesterday, January 2, 2007 the pre-treatment is not in compliance with the performance criteria of Appendix A Section D. 1. Therefore, New Ventures is in noncompliance with the requirements of the Order including, without limitation Paragraph 1(h). New Ventures shall immediately take all actions necessary to comply with the provisions of Paragraph 1(h). This email shall serve as written notice to New Ventures pursuant Paragraph 9 of the Order with regards

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to noncompliance with the provisions of Paragraph 1(h). MassDEP reserves its rights to exercise the full extent of its legal authority in order to obtain full compliance with the provisions of the Order and all statutes and regulations implemented by the MassDEP including, without limitation 310 CMR 19.000 the Solid Waste Management Regulations and 310 CMR 7.00 the Air Pollution Control Regulations.

The attached document is write protected.

Sincerely,

JohnC

John A. Carrigan, Chief
Solid Waste Management Section
Bureau of Waste Prevention
Northeast Regional Office Massachusetts Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

Phone: (978) 694-3299

Fax: (978) 694-3499

For Intra-Agency Discussion Only

January 3, 2007

A. Conditions For NVLLC To Place 14 Trucks Per Day At 1:1 Mix In Phase IA Disposal Requirements

NVLLC must be in compliance with the requirements of Paragraph 4 and the following remaining items in the Order:

- As required by Paragraph 1(h), continue 24/7 operation of the temporary landfill gas pretreatment system with demonstrated effectiveness. This requires the submission of flow measurements and Dräger tube analysis pursuant to Appendix A and the collection and analysis of the required laboratory analytical samples from the influent and effluent landfill gas of the pre-treatment system.

Note, Appendix A, Section E, “Pre-Treatment System Initial Startup – Demonstration System Operation” states, “Upon installation and start-up of the 24/7 pre-treatment system New Ventures shall, every four hours during the initial forty-eight (48) hours of operation of the pre-treatment system, sample the inlet into the pre-treatment system and the outlet of each active vessel of the pre-treatment system for H₂S and measure the flow rate into the flare. When the last four hour sampling event is performed at the end of the start-up period (that is, the sample collected at the 48th hour of operation) New Ventures shall also collect from the inlet and the outlet of the pretreatment system samples of landfill gas for laboratory analysis of sulfide compounds (sulfides, mercaptans, and thiols) using EPA Method 15 using GC/FPD or equivalent. If the readings meet the LFG Pre-Treatment System Performance Criteria for the 48-hour period then the pretreatment system will be considered to be operational. Thereafter New Ventures shall comply with the LFG System Monitoring requirements of Section F LFG System Monitoring below.”

Also, as described in the email accompanying this document. the pre-treatment system is in noncompliance with the performance standards of Appendix A Section D. of the Order. Therefore, pursuant to Paragraph 9 of the Order the resumption of the receipt or placement of C & D Fines and Residuals at the landfill by New Ventures requires approval by MassDEP that the pre-treatment system is operating in accordance with the performance standards of Appendix A.

- As required by Paragraphs 2 and 1(j), place tarps in “all areas of the Site containing construction and demolition waste fines and residual materials (“C&D Material”) that are not currently tarped, with the exception of areas that in the past twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity, which areas shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick.” These areas include:
 - 1) the south slope of the north side at the top of the haul road (including placing tarps) or;

- 2) the lobe to the northeast of the flare (approximately 6 foot strip and to the toe of slope);
- 3) the south slope of the landfill in the Phase IA Area where C&D Fines and residuals have been placed;
- 4) Any area of the west slope that is not active pending installation of the FML.

Note that pursuant to 310 CMR 19.130(15)(c) at the end of each day for any active fill area and/or areas that in the past twenty four (24) hours have undergone filling, grading, shaping, daily cover shall be placed within active areas to control blowing litter, odors, and to minimize the infiltration of water in areas in which active filling is occurring. Such daily cover may consist of either a minimum of 6" of soil, removable tarps or a spray on coating approved by the MassDEP pursuant to paragraph 2 of the Order. Soil used as daily cover may be used for purposes of mixing with C & D material that is placed directly upon it when activity is resumed in that area.

- Permission for disposal of spent Sulfa-Bind at the Landfill.
- As required by Paragraph 1(x), complete the placement of hay bales and silt fences as follows.
 - 1) Extend along the east side of the landfill to the southeast and northeast to the easterly property line (stone wall) as originally staked;
 - 2) Extend along the toe of the northern berm to Basin 2;
 - 3) Extend along the southwest corner to the area of Crow Lane and the site of post-leachate discharges.
- As required by Paragraph 1(u), Leachate Control Measures – implement measures to mitigate and control the release of leachate to surface water; begin performing with the following:
 - 1) Determine and document the 80% capacity level for each tank (100% capacity level is the elevation of the lowest invert to each tank);
 - 2) Determine and record the leachate levels in each tank on at least a daily basis with the exception of Tanks 4 and 5 which should be monitored periodically during the day to evaluate the flow rate;
 - 3) Commence and record the pumping of all tanks as necessary to maintain the level of leachate at 80% capacity or less to prevent system bypass and leachate breakouts;

- 4) Address the leachate seeps identified at the base of the berm immediately to the west of Tank 3 and approximately 100 feet east of basin 2 by initially placing soil or emulsion and monitoring the seeps daily;
- 5) Address the leachate seep at the base of the haul road by the placement of tarps, soil or emulsion on the north side of the haul road; if that is unsuccessful, modify/expand the collection system to Tank 1 to include the leachate discharge on the north side of the haul road at its base by expanding the French drain.
 - As required by Paragraph 1(m), submit a revised Closure Plan Schedule to reflect incorporation of the final berm design based on the geo-technical evaluation performed pursuant to Paragraph 1(p).
 - As required by Paragraph 1(s), complete installation of sampling ports, final valves, etc. for EW-11 and EW-12.
 - Receipt of written authorization from DEP to begin filling Phase IA pursuant to Paragraph 4.

B. Conditions To Place 24 Trucks Per Day At 1:1 Under The Order

Comply with the provisions of Paragraph 5 of the Order including without limitation:

- As required by Paragraph 1(r)(ii), complete installation of FML in Phase I Area, including without limitation anchoring and connection and operation of the Geocomposite gas vent system.
- As required by Paragraph 1(u), manage and mitigate contaminated leachate in basins and prevent discharge to surface water.
- As required by Paragraph 1(v), evaluate, maintain and expand as necessary the leachate collection system including implementing measures to control and mitigate leachate releases to the east and SW of the site. Submit for Department approval and implement a leachate control plan.
- As required by Paragraph 1(w), install the storm water swale to Basin 2 on the berm within the Phase I Area.
- Receipt of written authorization from DEP to begin placing up to 24 truckloads of C&D material per day pursuant to Paragraph 5.

C. Conditions To Place 35 Trucks Per Day At 1:1 Under the Order

Comply with the requirements of Paragraph 6 of the Order including, without limitation:

- As required by Paragraph 1(r), complete installation of the FML and gas geo-composite vent system on Phase I & II (anchored and gas system connected);
- As required by Paragraph 1(d), install and operate 24/7 with demonstrated effectiveness per Appendix A the permanent landfill gas pretreatment system.
- Receipt of written authorization from DEP to begin placing up to 35 truckloads of C&D material per day pursuant to Paragraph 6.

Other Issues

- Repair and expand the truck dry wash at the base of the haul road such that trucks existing and entering either over or around the scale pass through the dry wash.
- Sweep and maintain the access road (Crow Lane) into the landfill as necessary to control and prevent the emission of road dust the street sweeper does not appear to be operating properly (vacuum, spray etc.).
- Appendix A Section I.1.h. of the Order requires that "New Ventures in accordance with 310 CMR 19.011 shall certify all information and reports submitted to MassDEP. The Engineer pursuant to 310 CMR 19.011 shall certify all status reports and documents submitted to MassDEP by the Engineer." 310 CMR 19.011 reads in whole:

"(1) Certification. Any person, required by 310 CMR 19.000 or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the facility, and make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment."

(2) Engineering Supervision. All papers pertaining to design, operation, maintenance, or engineering of a site or a facility shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology, air modeling, air monitoring and groundwater sections of an application or monitoring report shall be completed by competent

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professionals experienced in the fields of soil science and soil engineering, geology, air modeling, air monitoring and groundwater, respectively, under the supervision of a Massachusetts registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.”

This includes without limitation, certification of the daily landfill gas monitoring reports submitted to New Ventures by facsimile.